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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Judge Robert J. Miller

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CONSOLIDATED RAIL CORPORATION)	CASE NO.:
a/k/a CONRAIL,)	S90-00056
)	
Defendant and)	
Third Party Plaintiff,)	
)	
vs.)	
)	
PENN CENTRAL CORPORATION, et al.,)	
)	
Third Party Defendants.)	
-----)	

The deposition of STEVEN E. DEKKER

Date: Thursday, December 3, 1992

Time: 9:30 o'clock a.m.

Place: 205 West Jefferson Boulevard
South Bend, Indiana

Called as a witness by the Plaintiff
in accordance with the Federal Rules of Civil
Procedure, pursuant to agreement as to date,
time and place.

Before Teresa L. Gemmel
Notary Public, State of Indiana

1 MR. KURT N. LINDLAND
2 U.S. Environmental Protection Agency
3 Office of Regional Counsel
4 Region 5: CS-3T
5 77 West Jackson Boulevard
6 Chicago, IL 60604

7 For the Plaintiff;

8 MR. JAMES A. ERMILIO
9 Bingham, Dana & Gould
10 Suite 1200
11 1550 M. Street, N.W.
12 Washington, D.C. 20005

13 For the Defendant and Third Party Plaintiff;

14 MR. PIERCE E. CUNNINGHAM
15 Frost & Jacobs
16 2500 Central Trust Center
17 201 East Fifth Street
18 Cincinnati, OH 45202

19 and

20 MR. GLENN J. ROSSWURM, II
21 May, Oberfell & Lorber
22 300 North Michigan
23 South Bend, IN 46601

24 For the Third Party Defendant.
25

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I N D E X

THE DEPOSITION OF

STEVEN E. DEKKER

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PLAINTIFF'S EXHIBIT NO.

MARKED

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1 STEVEN E. DEKKER,
2 called as a witness by the Plaintiff, being
3 first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. LINDLAND:

7 Q Would you please state your full name for the
8 record?

9 A Steven E. Dekker.

10 Q And your address please?

11 A [REDACTED] (b) (6)

12 Q And your phone number?

13 A [REDACTED] (b) (6)

14 Q Steve, my name is Kurt Lindland; and as I
15 mentioned, I'm an attorney with the United States
16 Environmental Protection Agency. I'm representing
17 the agency in the action for which we're here
18 today.

19 Are you familiar with the oath that you just
20 took?

21 A Yes.

22 Q You recognize that oath as binding on you today as
23 it would be in a court of law?

24 A Yes.

25 Q If there's a question that I ask that you don't

1 understand, say you don't understand it and I can
2 rephrase it for you. If there's an objection, you
3 should still answer the question unless your --
4 your --

5 MR. ERMILIO: Attorney is a good word.

6 Q (Continuing) -- your attorney instructs you
7 otherwise.

8 MR. LINDLAND: I was gonna' say Jim but.

9 Q If you need to leave, say so, and we can take a
10 break.

11 A Okay.

12 Q I don't expect this to go beyond 12:00 o'clock this
13 morning.

14 Have you ever been deposed before?

15 A Yes.

16 Q And what year was that?

17 A 1992, 1990, and I think the other time was 1989.

18 Q In 1992 do you remember the name of the action?

19 A No, I don't right offhand remember the gentleman's
20 name.

21 Q Okay. Do you remember what the case was about?

22 A Yeah, it was a personal injury.

23 Q And was that related to the Conrail rail yard in
24 Elkhart, Indiana?

25 A Yes, it was.

1 Q What was the nature of your participation in that
2 action?

3 A To give my expertise as to what the gentleman's job
4 consisted of.

5 Q Did the accident involve a railcar?

6 A The accident involved his moving a piece of
7 equipment on a railcar, yes.

8 Q Did that accident involve hazardous substances?

9 A No.

10 Q You mentioned in 1989 you were also deposed,
11 roughly.

12 A Yes. That was another personal injury.

13 Q Do you remember the name of the action or the
14 parties involved?

15 A That was Ferguson.

16 Q And that was with Conrail as well?

17 A Yeah.

18 Q What was the nature of the accident in that case?

19 A We had -- have a weed spraying program that takes
20 place. This gentleman alleged he was suffering
21 effects from the weed spraying.

22 Q Was he -- his position was an applicator of the
23 weed spray, or was he somebody that worked around
24 the material?

25 A He was a person that had worked after the material

1 had been sprayed.

2 Q Who normally sprays that material, and is that
3 somebody contracted out by Conrail?

4 A Yes, it is an outside contract.

5 Q Do you know the name of that company?

6 A No, I don't.

7 Q Do you know the name of the material used to spray
8 weeds?

9 A No, I don't.

10 Q What was your role in that action?

11 A That the spraying did take place, the number of
12 people who had been working in the area
13 subsequently from the time it was sprayed until
14 that day and that Mr. Ferguson was the only one who
15 seemed to be affected.

16 Q Do you remember the outcome of the action?

17 A No.

18 Q Is Mr. Ferguson still with Conrail?

19 A Yes.

20 Q Do you know what his job title is?

21 A Locomotive engineer.

22 Q Who's responsible for hiring the contractors for
23 weed spraying; do you know?

24 A The division engineer or maintenance of Way
25 Department.

1 Q Have you -- have you ever been deposed -- let's
2 see -- prior to 1989?

3 A No.

4 Q Have you ever testified at trial?

5 A No.

6 Q Were both of those actions settled then, I assume?

7 A I -- I never heard back. I would imagine that they
8 were settled.

9 Q Okay. Did you speak with anyone about your
10 deposition today?

11 A Yes.

12 Q Who did you speak with?

13 A My attorney.

14 Q Did you speak with anyone else?

15 A No.

16 Q Did you review any documents in preparation for
17 your deposition today?

18 A I did previously a couple weeks ago when I was
19 notified that different people were being called in
20 for a deposition.

21 Q And what documents did you look at; do you
22 remember?

23 A I looked at the Unusual Occurrence Report,
24 different Car Inspection Reports, the Hazardous
25 Lading Report of the incident that I was involved

1 with on -- with all of those reports.

2 Q Did you review any other records?

3 A No.

4 Q Did you bring with you any documents such as notes
5 or memorandum or letters today?

6 A No.

7 Q Did you prepare any notes regarding your
8 deposition?

9 A No.

10 Q Do you have any documents other than those in your
11 files at Conrail that relate to your job at
12 Conrail?

13 A No.

14 Q Did your counsel review your file at Conrail?

15 A I have no knowledge of that.

16 Q I'd like to ask you a few questions about your
17 background starting with your education. If you
18 could just sort of describe in summary form your
19 education beginning with high school?

20 A High school education, graduated.

21 Q In what year?

22 A 1973.

23 Q Was that from Elkhart?

24 A No, that was from Fort Wayne, Indiana.

25 Q Did you attend college?

1 A No.

2 Q Have you attended any seminars or any sort of
3 training programs?

4 A With Conrail I have in management training,
5 different other aspects of the job, safety rule
6 books, transportation rule books, things like that.

7 Q Beginning with the management sort of training, do
8 you remember what year the first one you attended
9 was?

10 A 1980 -- '85 I believe it was.

11 Q And was that at Elkhart?

12 A No, that was in Philadelphia.

13 Q What was the substance of the material covered in
14 that training?

15 A Different techniques of managing people.

16 Q Was the topic handling hazardous materials or
17 hazardous substances --

18 A No.

19 Q (Continuing) -- discussed during your training?

20 A No.

21 Q Did you attend any other management trainings other
22 than that one?

23 A We -- in our rules class seminar I have been shown
24 films on FRA or Federal Railroad Administration law
25 changes, revisions to our rules of the

1 Transportation Department, hazardous material
2 handling, air brake law.

3 Q Air brake?

4 A Right.

5 Q What year was the first rules class seminar held
6 that you attended?

7 A As a supervisor in 1985.

8 Q And during that training -- excuse me -- they
9 discussed or they -- they covered material related
10 to hazardous materials?

11 A Yes.

12 Q Do you remember the substance of that topic?

13 A During that training predominantly was the proper
14 handling of a hazardous material incident, making
15 sure that the proper paperwork was given to the
16 conductor of trains prior to their departure, just
17 the normal handling of hazardous material as it was
18 transported across our area of authority.

19 Q Was that training sponsored by Conrail?

20 A Yes.

21 Q Was it taught by Conrail employees?

22 A Yes.

23 Q Do you remember who those employees were?

24 A Not right offhand, no.

25 Q Do you remember whether specific spills were

1 discussed in that training?

2 A Specific incidents were discussed with -- in
3 relation to other railroads; and it had major
4 incidents, explosions, violent eruptions and what
5 had caused those eruptions with those railroads at
6 the time it happened.

7 Q Do you remember what railroads were involved in
8 those specific incidents?

9 A Norfolk Southern and Union Pacific I believe were
10 both films from both the railroads.

11 Q Do you remember whether any spills or incidents
12 that occurred at the Elkhart Yard were ever
13 discussed during that training?

14 A No.

15 Q Did you attend a rules class seminar after 1985?

16 A Yes, we are required every year to attend one.

17 Q Then beginning in 1986 was it basically the same
18 material covered?

19 A Basically it was the same material covered except
20 for, as I say, the changes that would take place as
21 the railroad changed or different laws would
22 change.

23 Q Do you remember a training where a significant
24 change in the laws was discussed?

25 A Only in the transportation field when we did away

1 with the old cabooses and now go to the end of
2 train telemetry device.

3 Q Okay. How did removing a caboose significantly
4 change the operations of the train?

5 A With no one on the rear end of the train anymore,
6 the end of train device now by radio transmits to
7 the head end the air pressure that is received at
8 the rear end of the train; and also by telemetry it
9 will tell the engineer the slack action that's
10 taking place in the train, that it is staying
11 together or not.

12 Q And by air pressure, you mean the air pressure in
13 the brake lines?

14 A That's true.

15 Q Do you remember whether specific spills or
16 incidents involving hazardous materials were ever
17 discussed at any of the rules class seminars that
18 you attended?

19 A None other than the ones I've already mentioned.

20 Q So was that tape or movie involving Norfolk
21 Southern and Union Pacific shown repeatedly?

22 A I would not say repeatedly, but it was a part of
23 the training at a number of seminars; not that they
24 were at every -- every year but at a majority of
25 them, I would say.

1 Q Do you remember any of the instructors of those
2 seminars between 1985 and the present?

3 A No, I don't. Last year our rules class instructor
4 was Kevin Dailly, who is now the supervisor or
5 manager of operating rules for the Dearborn
6 Division, and Allen Fisher, who is the -- I don't
7 know what his exact title is, but he is head of the
8 Rules Department for Conrail.

9 Q Allen Fisher?

10 A Uh huh.

11 Q Do you know where Allen Fisher is located?

12 A In Philadelphia.

13 Q And you said that Mr. Dailly's in Dearborn. Is that
14 right?

15 A Right.

16 Q Has Conrail ever contracted out for speakers at
17 these seminars?

18 A I have no knowledge of if they have or not. At my
19 class I did not know of any.

20 Q I'm speaking simply with respect to the rules class
21 seminars?

22 A For rules classes, no.

23 Q Okay. Do you remember whether a company by the
24 name of O. H. Materials was ever present at a rules
25 class seminar?

1 A I have no knowledge if they were or were not.

2 Q Okay.

3 Were there any other seminars that you
4 attended that covered material involving handling
5 or responses to hazardous -- hazardous materials?

6 A No.

7 Q Have you had any -- any training other than the
8 rules class seminar that involved hazardous waste
9 law or management?

10 A No.

11 Q Are you a member of any trade associations or
12 groups?

13 A Union affiliation is what you're speaking of?

14 Q That's one example.

15 A American Train Dispatchers Association.

16 Q Do you know who the chairman is?

17 A That right now is up for re-election. I don't know
18 who it is.

19 Q Do you know who the previous chairman was?

20 A No.

21 Q Okay.

22 When did you first become employed after high
23 school?

24 A 1973. April of '73.

25 Q And where were you employed then?

1 A Fort Wayne, Indiana.

2 Q Was that with Conrail?

3 A That was with Penn Central.

4 Q What was your position?

5 A A block operator.

6 Q Briefly, what are the responsibilities of a block

7 operator?

8 A He operates a portion of track between two points

9 and is responsible for the movements between those

10 two points.

11 Q What two points were you responsible for in 1973?

12 Do you remember?

13 A That was various as I was qualified as a block

14 operator in 53 different locations.

15 Q Did it ever include the Elkhart rail yard?

16 A No.

17 Q Who was your supervisor then; if you remember?

18 A Paul Dekker.

19 Q Is Paul Dekker still with Conrail?

20 A No.

21 Q Do you know where he is?

22 A Yes, he's living in Fort Wayne.

23 Q Is he retired?

24 A Yes.

25 Q Was your position as a block operator, were you

1 responsible for reporting spills or incidents
2 involving hazardous materials or accidents
3 involving cars?

4 A Anything of any unusual nature that I would have
5 observed would be my responsibility to report to my
6 immediate supervisor.

7 Q Were you ever promoted?

8 A Yes.

9 Q And what were you promoted to?

10 A Train dispatcher.

11 Q What year was that?

12 A 1974.

13 Q Was that also in Fort Wayne?

14 A Yes.

15 Q Briefly, what were your responsibilities in 1974?

16 A Train dispatcher is -- I would classify similar to
17 an air traffic controller. You may control upwards
18 of 300 miles of track, and all the movements that
19 may go on in that area must be okayed by your
20 authority first.

21 Q Did that include or did your range include the
22 Elkhart rail yard?

23 A No.

24 Q Would the Elkhart Yard have their own train
25 dispatcher that would --

1 A They were located in Chicago at that time.

2 Q So the Chicago train dispatcher would basically
3 control the Elkhart Yard?

4 A They would have handled -- yes, they would have
5 handled right up to the eastern point, and then
6 Toledo would have handled east from there. All
7 these offices we're now talking about are all gone.

8 Q Do you happen to know any of the train dispatchers
9 located in Chicago?

10 A They all have gone to Dearborn now, whoever was
11 there in Chicago.

12 Q They would all be in Dearborn?

13 A Yes.

14 Q Is that because Dearborn is now the central
15 location for train dispatching?

16 A Right.

17 Q Do you know any of the people's names who then went
18 to Dearborn from Chicago?

19 A Steve Biggs, I believe, is the only one I can think
20 of that was at that time or that I'm aware of that
21 was dispatching in that area.

22 Q And he was originally in Chicago?

23 A Originally in Fort Wayne. Then when they closed
24 the Fort Wayne office, moved to Chicago.

25 Q And what year was that?

1 A '77, '78.

2 Q And when did they close the Chicago office and move
3 everything to Dearborn?

4 A I would have to guess that was '87.

5 Q As a trained -- as a dispatcher, would you have
6 been aware of spills or accidents involving cars?

7 A If there was anything that occurred, it would have
8 had to have been reported to me by the train crew
9 or block operators that worked underneath me at
10 that time.

11 Q Okay. Were there any records kept in 1974
12 regarding, say, unusual occurrences?

13 A If there were, I am not aware of them. That was
14 not part of my job at that time.

15 Q Okay. You mentioned that if there was a spill or
16 accident involving a car that it would be reported
17 to you?

18 A Right.

19 Q Would you then make a record of that reporting?

20 A I would make a record of it on my train sheet.
21 Anything subsequent to that would have been handled
22 by a trainmaster or someone of a supervisory
23 capacity.

24 Q And what kind of information would you put on the
25 train sheet?

1 A That if there had been a train wreck, per se, the
2 number of cars that were involved in the wreck and
3 if there was any cars that had been opened up
4 because of the wreck or broken open because of the
5 wreck.

6 Q Would the commodity involved be recorded on that
7 train sheet?

8 A Not necessarily.

9 Q When you say "necessarily," it may have been or it
10 may not have been?

11 A It may have been or may not have been depending on
12 who the dispatcher was. If they felt it was
13 necessary to write it down, they may have. If they
14 didn't because of all the other people involved in
15 an incident, if there had been, one would have
16 handled the paperwork, would have handled anything
17 subsequently to that.

18 Q If the accident involved hazardous materials, would
19 that have been recorded on the train sheet by you?

20 A No.

21 Q Do you know how long those train sheets -- excuse
22 me -- sheets were kept?

23 A I think they were kept for seven years.

24 Q Do you know if a copy was sent to Philadelphia?

25 A No.

1 Q And what happened to them after seven years?

2 A I don't know.

3 Q Were you -- were you ever promoted after 1974?

4 A Yes. I was promoted to supervisor of train
5 operations in Jackson, Michigan.

6 Q What year was that?

7 A 1985.

8 Q And let's see. Briefly, what were your
9 responsibilities as supervisor of train operations?

10 A You supervised all the dispatchers under your
11 division territory.

12 Q And Jackson, Michigan, was that -- that was not
13 responsible for the Elkhart Yard?

14 A No.

15 Q Approximately how many trained dispatchers did you
16 have working for you then?

17 A Three.

18 Q Is the Jackson Yard larger or smaller than the
19 Elkhart Yard?

20 A Considerably smaller.

21 Q Do you know who the supervisor of train operations
22 was at that time in Chicago?

23 A No, not right offhand, no.

24 Q If there was a spill or accident involving a car,
25 would you have been notified as a supervisor of

1 train operations?

2 A If it was on the Michigan Division, I would have
3 been.

4 Q Okay. Assuming it would be in your division?

5 A Right.

6 Q You would be notified?

7 A Right.

8 Q And who would notify you?

9 A Again, the train crew through the dispatcher,
10 dispatcher to me.

11 Q Okay. Would you have made any records regarding
12 the accident?

13 A Yes.

14 Q What form would that record be in?

15 A In an Unusual Occurrence Report.

16 Q Are you referring to the CT-168?

17 A Yeah.

18 Q So the train -- the train dispatcher would not fill
19 out a 168?

20 A No.

21 Q Is that correct?

22 That would be the job of the supervisor of
23 train operations?

24 A Supervisor of train operations or any immediate
25 supervisor that was at any location of incident

1 that required a U.O.R. to be filled out.

2 Q Who was your supervisor then; do you remember?

3 A Assistant division superintendent at that time was
4 Mark Owens.

5 Q Is Mr. Owens still with Conrail?

6 A Yes, he is.

7 Q Is he still in Jackson?

8 A No, he's, I believe, in the Pittsburgh Division.

9 Q Did your job responsibilities change after 1985?

10 A Yes. In October of '85 I was promoted to
11 trainmaster at Grand Rapids, Michigan.

12 Q What were your responsibilities as trainmaster at
13 Grand Rapids?

14 A The operation of the Grand Rapids Yard, the on-time
15 performance, safety over the territory that was
16 part of the Grand Rapids territory.

17 Q If there was a spill or accident involving a car,
18 would you be notified as the trainmaster?

19 A Yes.

20 Q And who would notify you?

21 A The crew, the yardmaster or any other employee that
22 would be there to see it or had seen it first would
23 notify me if I was not or had not been made aware
24 of it yet.

25 Q Is there just one trainmaster assigned to a yard?

1 A It depends on the size of the yard and the
2 location.

3 Q Is the Grand Rapids Yard larger or smaller?

4 A The Elkhart Yard is smaller.

5 Q And how many trainmasters are assigned to the Grand
6 Rapids Yard?

7 A One now.

8 Q And in 1985?

9 A One.

10 Q Do you remember who your supervisor was then?

11 A Mark Owens.

12 Q Would you have kept any records relating to spills
13 or accidents involving cars as the trainmaster?

14 A Any incident that would have occurred would have
15 been put on an Unusual Occurrence Report no matter
16 what the incident was.

17 Q Okay. But, as part of your responsibilities as a
18 trainmaster, would you, yourself, have made --

19 A Yes. Had there been any incident at all; spill,
20 road crossing incident, anything, it would have
21 been put on an Unusual Occurrence Report which I
22 would have made up, yes.

23 Q Okay. A moment ago you said that the supervisor of
24 train operations fills out a 168 -- CT-168 or
25 Unusual Occurrence Report, and just now you

1 mentioned that the trainmaster -- that you would
2 also fill one out.

3 Would there be two for the same occurrence,
4 or are we talking about the same 168 form?

5 A We're talking about the same 168. What I said was
6 that the supervisor of train operations would fill
7 that out unless there was a supervisor in the field
8 that was filling it out.

9 Q Okay, I'm sorry.

10 Do you know who the trainmaster was in 1985
11 in Chicago? Or I guess it would have been in
12 Dearborn.

13 A Trainmaster?

14 Q Or is the trainmaster located at the rail yard or
15 the classification yard itself?

16 A They have different trainmasters at different lo --
17 at different classification yards, at each one.

18 Q Okay. So this is not a division responsibility?

19 A No.

20 Q Okay.

21 All right. Did your responsibilities ever
22 change after October of '85?

23 A Yes. I was transferred to Detroit, Michigan.

24 Q What year was that?

25 A 1986.

1 Q And what was your responsibilities or what was your
2 title?

3 A Lead trainmaster.

4 Q Lead trainmaster?

5 A Yes.

6 Q And what were your responsibilities?

7 A Supervising of, again, a yard and trainmasters
8 working under me as well as crews, on-time
9 performance, safety, operation of the yard more or
10 less.

11 Q How is lead trainmaster different than trainmaster?

12 A You're directing other supervisors now underneath
13 you rather than you are the only supervisor there.
14 Lead trainmaster is responsible for the budget, the
15 total operation of the yard.

16 Q Of one specific yard?

17 A Of one specific yard.

18 Q So there would have been a lead trainmaster at the
19 Grand Rapids Yard as well?

20 A No, that yard was significantly smaller in size as
21 a classification yard goes and logistically not as
22 important.

23 Q Okay. So, it's -- it's fair to say, then, that
24 large yards have lead trainmasters, whereas small
25 yards do not?

1 A Correct.

2 Q Would the Elkhart Yard have had a lead trainmaster
3 in 1986?

4 A I don't know if they classified them as that in
5 Elkhart at that time. Elkhart is a different type
6 setup, per se. All the trainmasters at Elkhart
7 Yard have been lead trainmasters at other locations
8 and brought to Elkhart Yard as a trainee in a major
9 hump yard facility for exposure and for future
10 promotion.

11 Q So the Elkhart Yard is a -- a complicated place
12 relative to the other ones we've talked about
13 today?

14 A Yes.

15 Q Jackson, Fort Wayne and Grand Rapids?

16 A And you have an assistant terminal superintendent
17 as well as a terminal superintendent at Elkhart
18 Yard, where you do not have the same positions at
19 the other satellite yards.

20 Q I see. Okay.

21 So there would be somebody at the Elkhart
22 Yard in 1986 with the responsibilities of lead
23 trainmaster, but that may not be the title?

24 A Correct.

25 Q Okay.

1 If there was a spill or accident involving a
2 car in 1986, would the lead trainmaster be
3 notified?

4 A Correct, the trainmaster that was on duty, the
5 assistant and/or terminal superintendent that would
6 be on duty at the time.

7 Q Okay. Did your responsibilities change after 1986?

8 A Yes.

9 Q And what year was that?

10 A 1989 I was transferred to Elkhart Yard as
11 trainmaster.

12 Q In 1989 who was your supervisor?

13 A The assistant terminal superintendent was Bill
14 Dunlap.

15 Q Do you know where Mr. Dunlap is today?

16 A He is located in Indianapolis.

17 Q Is he with Conrail?

18 A Yes.

19 Q Do you have any idea how long Mr. Dunlap was at the
20 Elkhart Yard?

21 A Two years I think. He came there one day prior to
22 to when I arrived.

23 Q Okay. How many employees did you have working
24 under you in 1989 at the Elkhart Yard?

25 A It's various, but I would guess it at 500.

1 Q And what department is the trainmaster in?

2 A Transportation.

3 Q Are you familiar with your predecessors at that
4 time? In other words, those who had the position
5 of trainmaster prior to you?

6 A Yes. Let's see. There was Mike Schmidt. He's
7 been transferred a number of times. I don't know
8 where he is at. He is still with Conrail. Dave
9 Perry. I believe he has now been transferred to
10 Arkansas.

11 Q He's with Conrail?

12 A Yes. Two other gentlemen, their names escape me at
13 the moment.

14 Q How long was Mike Schmidt at the Elkhart Yard, if
15 you know?

16 A I don't know.

17 Q What about Mr. Perry?

18 A I don't know.

19 Q Did your responsibilities change after 1989?

20 A Yes. In 1991 I became assistant terminal
21 superintendent.

22 Q And is that your title today?

23 A Yes.

24 Q When you were the trainmaster in 1989, if there was
25 a spill or accident involving a car, would you have

1 been notified?

2 A If I was on duty at the time, yes.

3 Q Do you remember any such spills or accidents?

4 A No.

5 Q Do you remember hearing about any spills or
6 accidents?

7 A No.

8 Q As assistant superintendent, what are your
9 responsibilities? I guess let's start in 1991.

10 A A safe and efficient operation of Elkhart Yard and
11 the territories under it, on-time performance,
12 supervise the employees under me.

13 Q When you say the territories under it, what are you
14 referring to?

15 A Elkhart facility, as assistant superintendent I go
16 as far or just outside of Toledo going east. My
17 territory includes Fort Wayne south to Terre Haute
18 west and Bristol north.

19 Q Is Bristol in Michigan?

20 A Bristol, Indiana. I believe that's still in
21 Indiana; Bristol, Indiana.

22 Q How are your responsibilities or how were your
23 responsibilities in 1991 related to transportation
24 or handling of hazardous substances?

25 A I don't understand.

1 Q Are there tank cars or other types of cars that are
2 shipped through the Elkhart Yard that contain
3 hazardous materials?

4 A Yes.

5 Q And does your -- your responsibilities as the
6 assistant terminal superintendent, are you affected
7 or do you have to do anything related to those
8 shipments?

9 A If there's any special handling of any equipment,
10 we make sure it's handled properly. That is all
11 supervisors' responsibility, no matter if it's
12 hazardous material or automotive equipment, parts,
13 high and wide loads; anything that pertains to any
14 handling of any equipment that would be unusual or
15 important.

16 Q Hazardous materials are unusual or important?

17 A Depending on the type of car they are.

18 Q What -- what kind of car would be considered
19 unusual or important?

20 A What we would consider is in the humping operation
21 is what I'm speaking of predominantly. Some cars
22 are cars classified as not to be humped or flat
23 switched. In that case they are shoved over the
24 hill to rest.

25 Q What is flat switched?

1 A When an engine has one or more cars and cuts them
2 off in motion to attach onto other cars.

3 Q What kind of cars fall into this category, that is
4 ones that should not be humped or flat switched?

5 A High value shipments, poisonous gas, anything that
6 is placard is do not hump or as in the CT-225 that
7 meets those regulations of the placard type that
8 would be do not hump or cut off in motion.

9 Q So there's a class of materials that is called,
10 like, "do not hump" kind of materials?

11 A Right, and they're classified in the CT-225 that
12 they are not to be humped or cut off in motion.

13 Q And the CT-225 --

14 A Is hazardous material regulations.

15 Q Are you familiar with chlorinated solvents?

16 A No.

17 Q Are you familiar with trichloroethylene?

18 A No.

19 Q Have you heard of carbon tetrachloride?

20 A No.

21 Q Are all hazardous materials -- do they fall in this
22 category of not to be humped?

23 A No.

24 Q Or is it just certain ones?

25 A Just certain ones.

1 Q Do you know specifically any ones?

2 A That do fall into the category?

3 Q Right.

4 A Poisonous gas. Should we have a -- if we would
5 have a -- say, a radioactive material type car,
6 that obviously would not be humped or flat
7 switched. Anything of an explosive nature would
8 not be flat switched or humped.

9 It depends on the commodity and how it falls
10 under the hazardous materials regulations.

11 Q Why -- why should these materials not be humped or
12 these cars? Why should these cars not be humped?

13 A Were they to derail or be punctured, it would cause
14 a hazardous material incident or by an eruption,
15 depending on the commodity of the car.

16 Q Are derailments or punctures common in humping
17 operations or flat switching?

18 A I wouldn't say they are common.

19 Q Can they occur?

20 A They can occur, yes.

21 Q About how often do they occur on a yearly basis
22 would you say or monthly?

23 A That would -- that's a very wide range in question,
24 I mean, as far as a derailment occurring, the
25 conditions that's outside track. You might have

1 one once a month, depending again on the condition
2 or what the cause of it is or what have you.

3 Q Now, I'm talking about just humping.

4 A Just humping?

5 Q Right.

6 A That would just be a guess on my part.

7 Q Okay. When you say "the conditions," what do you
8 mean by "the conditions"?

9 A If we're talking just humping, then the conditions
10 are not quite playing the part. Our yard is a
11 computerized yard, so I was speaking more flat
12 switching.

13 Q Okay. How do the conditions affect flat switching?

14 A Weather conditions, ice buildup on the rail in
15 certain locations. Depending on the yard or
16 facility, we have facilities that are much older.
17 They're not as up-to-date as Elkhart Yard is. The
18 track may not be as good, something like that.

19 Q Is there a particular location where flat switching
20 occurs in the yard?

21 A At Elkhart Yard it's very rare to have flat
22 switching because it is a hump yard. Satellite
23 yards that are not hump yards is where the flat
24 switching occurs.

25 Q So most of the switching in Elkhart occurs at the

1 hump?

2 A Correct.

3 Q Now, you said it's rare to have flat switching.

4 Does that mean it never happens or it's just not
5 that often?

6 A Just not that often.

7 Q When it does happen, is there a specific place in
8 the yard that it would happen?

9 A Yes. It would happen at the west end of the yard,
10 and it is usually handling automotive traffic.

11 Q You mean cars that are carrying cars?

12 A Finished -- yes, finished automotive.

13 Q How about cars that are carrying automobiles?

14 A Cars that are carrying automobiles, yes.

15 (Plaintiff's Deposition Exhibit No. 1
16 marked for identification.)

17 BY MR. LINDLAND:

18 Q Steve, I'm handing you what's been marked as
19 Plaintiff's Exhibit No. 1.

20 Do you recognize this diagram?

21 A Yes.

22 Q What diagram is this?

23 A Diagram of the Elkhart Yard.

24 Q Is it possible to identify on this diagram where
25 the flat switching would occur if it did occur?

1 A It would occur at the west end of the yard, and I'm
2 talking of as you are looking at the groups of nine
3 tracks. You have eight groups there. Each group
4 has nine tracks in it.

5 Q Okay. If you notice, the -- the track area is
6 split up into kind of sectors; 6A, 6B, 5A, 5B, et
7 cetera.

8 Do you see that?

9 A Uh huh.

10 Q Which sector would the location be in that -- where
11 flat switching would occur?

12 A It would be in the north half of 5B, middle to
13 north half of 5B and the middle to lower half of
14 5A.

15 Q Okay. That group of kind of looks like a bulge of
16 tracks there.

17 A Actually, what I'm -- what I'm basically talking
18 about is the entire class yard. The entire class
19 yard is consisting of all 72 tracks from north to
20 south at the west end.

21 Q Okay.

22 Are you aware of any flat switching
23 operations that have occurred since you've been at
24 the Elkhart Yard?

25 A Yes.

1 Q And what -- what year would those be; do you know?

2 A '92 predominantly.

3 Q And why in '92?

4 A We changed some agreements with foreign railroads
5 as well as some industries we served; and
6 particularly on Monday and Sunday we will bring in
7 a 30 to 40 car multi-level finished automobile
8 train, send it down to the west end of the yard,
9 have each car classified to the proper track that
10 will carry that car to the proper destination.

11 Q Okay. You mentioned that certain materials were
12 identified in the CT-225 as should not be humped?

13 A Correct.

14 Q Do you know when that policy was implemented?

15 A No.

16 Q Was it there when you came to Elkhart?

17 A Yes.

18 Q Was it there -- or strike that.

19 When you were in the Detroit Yard or the
20 Grand Rapids Yard, was that policy also
21 implemented, or were those not humping yards that
22 would apply?

23 A Those are not humping yards, but they still do
24 apply. Those are flat switch and cut off in motion
25 cars, and cars that are not to be cut off in motion

1 or not humped are not to be cut off in motion or
2 not humped no matter what the type of yard you are
3 in.

4 Q Okay. Was that policy implemented in 1985?

5 A Yes.

6 Q In Grand Rapids?

7 Was it implemented in 1973 when you were in
8 Fort Wayne?

9 A I was not in that type of operation at that time.

10 MR. ERMILIO: Kurt, when you're saying
11 "implemented," do you mean in effect or as
12 opposed to instituted or originated in that
13 area?

14 MR. LINDLAND: I'm asking him whether he
15 followed the policy or whether the policy was
16 there.

17 MR. ERMILIO: Okay. Whether it was in
18 effect at that time?

19 MR. LINDLAND: Right.

20 MR. ERMILIO: Not whether it was the
21 first year it was instituted?

22 MR. LINDLAND: Not the first year, but
23 whether they followed it.

24 A Yes.

25 Q It was?

1 A Yes. And then it was followed -- and what happened
2 in '73, I have no knowledge of. I was not a part
3 of that type of operation at that time. I was in
4 the odd block operator train dispatcher operation,
5 which is entirely separate from a yard operation.

6 Q What -- what about 1974? You were a trained
7 dispatcher then?

8 A Same thing.

9 Q It wouldn't be in your department?

10 A That was not my department.

11 Q Okay.

12 Are you familiar with a company called Miles
13 Laboratory?

14 A They are a customer of ours at Elkhart, yes.

15 Q Are you aware of whether they receive any materials
16 through the Elkhart Yard?

17 A We ship cars to them, yes. We deliver cars to
18 them.

19 Q And do you ship cars from there? In other words,
20 do they send products that they manufacture through
21 the Elkhart Yard from their facility as well?

22 A I do not know what they -- if they send us back
23 loads or not.

24 Q Okay. What materials, if you know, are shipped to
25 Miles Laboratory through the Elkhart Yard?

1 A I do not know that.

2 Q As the assistant superintendent, what positions do
3 you supervise? Or is this --

4 A The entire yard.

5 Q Okay. Is that all departments?

6 A That is all Transportation Department and support
7 departments will report to me or will -- I will
8 oversee their operation to make sure that they are
9 supporting the Transportation Department as they
10 need to.

11 Q What are support departments?

12 A Track Department, Maintenance of Way, Bridge and
13 Building Department and Car Department.

14 Q Maybe I should ask what department don't you
15 supervise?

16 A There's no department in Elkhart Yard that I don't
17 oversee. Each department has their department
18 head.

19 Q But you have ultimate responsibility for all the
20 departments?

21 A As far as the total operation of Elkhart Yard.
22 They answer for their own budget, what their people
23 do underneath them.

24 Q I see.

25 You mentioned the Maintenance of Way

1 Department. Could you briefly describe what their
2 responsibilities are?

3 A Maintenance of the track structure.

4 Q Is Nick Montagano the supervisor of that
5 department?

6 A Yes, he is.

7 Q Who are your employees that are immediately below
8 you?

9 A My trainmasters.

10 Q And who are they?

11 A That is Paul Parent, Doug Hand, Terry Karre, Paul
12 Kuhn.

13 Q Is Karre, C-a-r-r?

14 A K-a.

15 And Underwood, Clint Underwood.

16 Q Do you know how long Paul Parent's been at the
17 Elkhart Yard?

18 A Approximately two years.

19 Q What about Mr. Karre?

20 A He might have been there a month or so prior to --
21 I'd say right around two years also.

22 Q And Mr. Kuhn?

23 A Same thing.

24 Q Mr. Underwood?

25 A Six months maybe.

1 Q Is there anyone that you can think of in your
2 department that's been at the Elkhart Yard greater
3 than ten years?

4 A Not greater than ten, no. Not as a transportation
5 supervisor I know.

6 Q Are you aware of whether there are any cars that
7 are shipped through the yard that are refrigerated?

8 A Yes.

9 Q And do you know which cars those are?

10 A As you mean which cars are --

11 Q What kind of cars are they? Tank cars? Boxcars?

12 A Boxcars predominantly.

13 Q Are tank cars also refrigerated?

14 A Not to my knowledge.

15 Q Are you aware of the recharging facilities
16 associated with refrigerated cars?

17 (Whereupon Mr. Cunningham arrived at
18 the deposition.)

19 A That is under the Car Department's -- supervisor of
20 the Car Department if cars need to be recharged or
21 they -- it is up to them to make sure that they
22 sustain their proper fuel.

23 Q Are they recharged at the Elkhart Yard?

24 A Yes.

25 Q Turning your attention to what's been marked as

1 Exhibit No. 1, could you identify in there or on
2 there what section the recharging occurs?

3 A It depends where the cars are located. If they're
4 in our receiving yard, if they're in the class
5 yard, if they're in the departure yard, if the
6 availability to get next to them is good, then
7 they'll recharge them right there.

8 Q Is it a mobile source?

9 A Yes, it's a mobile source. A private vendor, is my
10 understanding, that comes out and takes care of the
11 recharging of these.

12 Q Do you know the name of that private vendor?

13 A No.

14 Q Is it something that goes on the tracks? It has
15 rail -- railcar wheels that roll on the track, or
16 is it something that pulls up next to it?

17 A Pulls up next to it, I believe.

18 Q Are you familiar with a Material Safety Data Sheet?

19 A No.

20 Q Are you familiar with any spills associated with
21 refrigerated material?

22 A No.

23 Q Or the refrigeration, say, the freon or whatever
24 they use to recharge?

25 A No.

1 Q Would you be aware of a spill if there was one?

2 A If there was one while I was there, I would have
3 been made aware of it.

4 Q When you say, "when you were there," do you --

5 A I'm saying if I would have been on duty at the time
6 and paperwork had been filled out and a spill would
7 have happened, it would eventually -- I would have
8 been notified of it or found out about it.

9 Q Okay. What -- what shift do you work?

10 A 7:00 p.m. to 7:00 a.m.

11 And when we're talking about recharging, now
12 I'm talking about fueling of the refrigerated units
13 by diesel fuel is what I'm speaking of.

14 Q Okay. All right. And that is done by an outside
15 vendor?

16 A Right.

17 Q Okay. I guess I'm asking about recharging.

18 A I have no knowledge of that at all.

19 Q Would the car shop know about that?

20 A That, I don't know if they do or not.

21 Q Okay.

22 What's your role as the assistant
23 superintendent with respect to spills of hazardous
24 materials?

25 A If a spill would occur, I would be notified. We

1 would notify the proper authorities, Chem Trek,
2 fire department, shipper, a receiver. We'd have a
3 regular list that we go down of people that we
4 notify; take whatever action at the time that we
5 can do to clear people away; dike it if necessary,
6 depending on the material; move the car to a safe
7 location if it can be moved.

8 Q Are any notes kept by the person reporting a spill?

9 A Yes. If it's been reported to me and I'm now
10 giving it to Dearborn, yes, we will keep notes as
11 to what's taking place, what time it's being done,
12 what action and who's being notified.

13 Q Are those notes kept out at Elkhart?

14 A They can be kept there and usually at Dearborn.
15 Usually they're kept with the Unusual Occurrence
16 Report.

17 Q And the Unusual Occurrence Report is sent to
18 Dearborn. Correct?

19 A That's correct, along with any other applicable
20 information.

21 Q Would copies be kept at Elkhart?

22 A The original would be kept at Elkhart.

23 Q Do you know how long you'd keep that form?

24 A No, I don't.

25 Q Who would know that?

1 A I would say Mr. Gary might, terminal
2 superintendent, or the transportation
3 superintendent.

4 Q And who is that?

5 A That's Bob Downing.

6 Q Would a copy be sent to Philadelphia?

7 A That would be up to Dearborn.

8 Q Okay. Who would you notify in Dearborn,
9 specifically?

10 A Supervisor of train operations immediately is the
11 first person.

12 Q And who is that?

13 A That depends on the trick or shift that they're
14 working.

15 Q So there's four supervisor of train operations?

16 A Four of them or assistant division superintendents,
17 depending again on the hour, the day and who may be
18 working.

19 Q Do you know any offhand? Any of their names?

20 A Ron Close, Charlie Gray, both the superintendent
21 divisions.

22 Q Gray?

23 A Uh huh.

24 Rod Bets, Mike Dunn. Those are the people I
25 mainly deal with.

1 Q Do you know how long Mr. Close has been at
2 Dearborn?
3 A Approximately a year.
4 Q What about Mr. Gray?
5 A Maybe a year and a half.
6 Q Mr. Bets?
7 A I would guess four years, maybe five and the same
8 for Mr. Dunn.
9 Q Okay. Are you familiar with a red book that lists
10 STCC numbers or materials?
11 A You've lost me with that.
12 Q Okay. Okay, beginning with 1991, are you familiar
13 with any spills out of the Elkhart Yard of
14 hazardous materials?
15 A 1991 we had one spill I'm aware of out of the yard.
16 Q Do you know what material that was?
17 A I just looked back. It was -- I think the U.O.R.
18 made out on it, a type of acid. I don't recall the
19 name of it right offhand. Hydrochloric acid I
20 think it was.
21 Q And who reported that spill to you?
22 A My trainmaster called me at home and reported it to
23 me.
24 Q Did he say who reported it to him?
25 A Car Department personnel.

1 Q Did he say specifically?

2 A He did, but I don't recall the name right offhand.

3 Q Would the Car Department be the most likely to
4 report a spill if a spill occurs?

5 A That just depends. In the receiving yard where
6 they are walking the tracks, yes. In the class
7 yard where crews would be walking the tracks
8 coupling up the cars as they went, they would.

9 Again, if the cars are out in the departure
10 yard, again, the Car Department would probably be
11 the one.

12 Q Okay. You mentioned in the classification yard if
13 a spill occurred who would?

14 A Crews that were working in the classification yard
15 at the time.

16 Q And what department do the crews fall within?

17 A Transportation.

18 Q Are there crew chiefs?

19 A No.

20 Q How many crews are there?

21 A Depends on the shift.

22 Q Say an average shift?

23 A Let's say average of three to four crews per shift.

24 Q And then there is a -- is there a leader of each
25 crew?

1 A There is a conductor. He is the leader of the
2 crew.

3 Q Do you know any of the conductors' names?

4 A Not right offhand.

5 Q Okay.

6 Who did you notify after that -- after you
7 were called at home, who did you notify?

8 A I come out and notified Dearborn what information
9 we had had at that time. They already had been
10 notified by the trainmaster we had had an incident.
11 I talked with Dearborn. I talked with Nick
12 Montagano, with Chem Trek, with the shipper, with
13 the receiver, with O. H. Chemicals, the fire
14 department, a number of agencies.

15 Q Okay.

16 You mentioned that you notified Chem Trek?

17 A It was through myself. I believe Dearborn actually
18 notified them or had notified them before I got
19 there. I know I went back and spoke with them on a
20 couple of occasions during this time period while
21 we were getting the car evaluated as to what we
22 had, how much we were losing, what have you.

23 Q Did Chem Trek send somebody out?

24 A They sent -- I believe they notified the Indiana
25 Environmental Protection Agency, and they sent

1 someone out.

2 Q What did Chem Trek do other than notify?

3 A They assisted in getting ahold of the shipper and
4 receiver for what had to be done with the commodity
5 and notifying, making sure they had people set up
6 and around also.

7 Q Did they send you any kind of a record of your call
8 to them?

9 A No.

10 Q Did they send you anything after you reported the
11 spill?

12 A Nothing to me. If they sent anything, it would
13 have gone to Dearborn I would assume. Nothing was
14 sent to me from them.

15 Q Do you remember the person's name at Dearborn that
16 you spoke with?

17 A I -- I don't recall who was working that night
18 offhand.

19 Q Are there any other records kept of this spill
20 other than the 168?

21 A Car Department made out their defective car report.
22 I would have to go back and look at our package to
23 see what all is there as actual other reports. The
24 primary is the U.O.R. and the Car Defect Report.

25 Q I see.

1 A There were just other pieces of paper that showed
2 the times other people were notified and what was
3 done consequently.

4 Q Was this the Car Department?

5 A Yes.

6 Q What was the defect; do you know?

7 A I believe they call it the diaphragm inside the
8 tank car had a breach in it, and subsequently the
9 hydrochloric acid had leaked down into the lowest
10 point of the car in the seam and had begun to eat
11 away at the seam causing -- allowing the material
12 to leave the car.

13 Q Do you remember what was done in response to that
14 leak?

15 A We moved the car from the track it was sitting on,
16 isolated the car. We built a dike around the car
17 and looked for a -- I want to say sulfur, but
18 that's not what I'm looking for. Some chemicals to
19 neutralize the -- try to neutralize the --

20 Q Lime?

21 A Lime.

22 Q Turning your attention to what's been marked as the
23 Plaintiff's Exhibit No. 1, where was the car moved
24 to?

25 A Let's see if we can see it on here. I believe the

1 car was sitting in what would be the northeast
2 quadrant of 1A along the groups of tracks, so
3 we're -- you have to come lower from where you are,
4 a little lower than that. Down here, yeah
5 (indicating).

6 And was moved, and it looks like to what
7 appears to be where the star is.

8 Q What -- in what sector? The same?

9 A It's still in the same sector, but this little stub
10 track.

11 Q Oh, I see. So you're talking about Sector 1A?

12 A Yeah.

13 Q The lower part of that.

14 Are you familiar with a location in the yard
15 known as the leaking tank car area?

16 A No.

17 Q And was the car repaired after it was moved?

18 A The car was -- the material that was left in it was
19 taken out by truck; and then the car, I believe,
20 was reweighed to see what may or may not be left in
21 the car as residue and then was sent for repairs.
22 I think they diked up the leak there, but then the
23 car was sent on without actually making permanent
24 repairs.

25 Q Was the manufacturer of the car notified?

1 A Yes.

2 Q Do you remember who that was?

3 A No.

4 Q Are you familiar with GATX?

5 A I am familiar with that symbol, yes. GATX, yes.

6 Q Was that a tank car manufacturer?

7 A I don't know if they're manufacturers. I know I've
8 seen the symbol on the car, GATX. If they're the
9 owner or manufacturer, I don't know.

10 Q Do you know whether GATX was on this specific car?

11 A Not without looking at the U.O.R.

12 Q Would the 168 or the package, as you refer to it
13 as, is that still out at the Elkhart Yard?

14 A Yes.

15 MR. ERMILIO: Kurt, I believe that was
16 in the package of documents sent to Peter
17 last Friday I believe it was.

18 MR. LINDLAND: Was it?

19 Okay. I haven't seen those.

20 MR. ERMILIO: There are also others --
21 other U.O.R.'s that are on their way at the
22 latest, early next week that are being copied
23 now --

24 MR. LINDLAND: Okay.

25 MR. ERMILIO: (Continuing) -- that we

1 have located.

2 BY MR. LINDLAND:

3 Q Did you actually go out to the spill site?

4 A Yes.

5 Q And do you remember any vapors or any smells or
6 anything like that?

7 A There was a slight odor. There was no vapor that I
8 was aware of.

9 Q Are you aware of any other spills other than that
10 one in 1991?

11 A Yeah, we had one other car that had tallow or
12 animal fat that spilled out apparently in 5
13 receiving. It was maybe 100 foot long. We ended
14 up having our cleaner come out and clean it up.

15 Q What was the cause of the spill; do you remember?

16 A Defective valve in the bottom of the car is what I
17 believe it amounted to be.

18 Q Was that a tank car?

19 A Yes.

20 Q Are you aware of any spills prior to 1991?

21 A No.

22 Q Down at the yard?

23 Are you aware of any other spills?

24 A No.

25 (Plaintiff's Deposition Exhibit No. 2

1 marked for identification.)

2 Q Have you ever seen this document before,
3 Mr. Dekker?

4 A Not -- no.

5 Q Turning your attention to the last page, what
6 appears to be a record of a spill of hydrochloric
7 acid in December of 1989, is this the one you're
8 referring to in 1991 or -- in other words, is this
9 a mistake; do you think?

10 Does any of this information look familiar?

11 A None of it looks familiar to me.

12 Q Turning your attention to the shipper named Reagent
13 Chemical & Research, do you remember whether that
14 was the shipper of the spill that you're referring
15 to?

16 A No, I do not recall.

17 Q Is there a log book that is kept of spills that
18 would be a summary similar to this?

19 A Not to my knowledge.

20 Q Out at the Elkhart Yard?

21 A Not to my knowledge.

22 Q Do you have any idea where this document would be
23 produced?

24 A No, I don't.

25 MR. LINDLAND: I have no further

1 questions right now.

2 MR. CUNNINGHAM: Go ahead.

3 CROSS EXAMINATION

4 BY MR. ROSSWURM:

5 Q Mr. Dekker, my name is Glenn Rosswurm, and I'm
6 local counsel for Penn Central Corporation, a third
7 party defendant in this case.

8 You mentioned that you graduated from high
9 school in 1973 and began work for Penn Central in
10 1974. Is that correct?

11 A '73, yeah.

12 Q '73?

13 Do you have any -- any personal knowledge of
14 any incidents which occurred prior to 1970
15 involving releases or spills at the Elkhart Yard?

16 A No.

17 Q Have you heard anything about any such incidents?

18 A No.

19 Q Do you know an individual named Claude Brewton?

20 A No.

21 Q And have you ever heard of him -- heard anything
22 about him?

23 A No.

24 Q Do you know Ted Berkshire?

25 A I know the name. He is an employee with Conrail.

1 As to what he does, I don't recall.

2 Q Okay. With respect to the layout of the tracks at
3 the Elkhart Yard, if I can just refer you to the
4 exhibit here, it appears that Track 69 is located
5 in Group 8 on this document. Is that correct?

6 A Yes.

7 Q To your knowledge, has the location of Track 69
8 changed at any time over the years, for example
9 since you've -- you've been affiliated with the
10 yard since 1989?

11 A No.

12 Q Are you aware of any changes in its location prior
13 to your arrival at Elkhart Yard in 1989?

14 A No.

15 Q Okay. Do you know who the trainmaster or any of
16 the trainmasters at Elkhart yards were between the
17 years 1966 and 1970?

18 A No.

19 Q Or who the assistant superintendent would have been
20 at that time?

21 A No.

22 Q Okay. And a couple of -- couple of brief
23 questions.

24 I believe you had mentioned earlier that
25 during your time as a trainmaster from 1989 to 1991

1 that you were not aware of any releases or spills
2 at Elkhart Yard. Is that correct?

3 A That's correct.

4 Q Okay. And you're not aware of any prior releases
5 or spills at Elkhart Yard before 1989?

6 A I have no knowledge of any.

7 MR. ROSSWURM: I don't have anything
8 further.

9 MR. CUNNINGHAM: Nothing further.

10 MR. LINDLAND: I just have two more
11 questions.

12 REDIRECT EXAMINATION

13 BY MR. LINDLAND:

14 Q You mentioned earlier that there were certain
15 conditions that would make flat switching more --
16 more dangerous. Are there any conditions that
17 affect humping that you're aware of that would
18 cause some materials to fall within that category
19 that you've identified as not to be humped?

20 MR. ERMILIO: Can you repeat that
21 question?

22 MR. LINDLAND: Sure.

23 MR. ERMILIO: Or rephrase it for me?

24 MR. LINDLAND: Okay.

25 Q You mentioned that there were certain materials

1 that fell within a category, and that category is
2 labeled or placarded as not to be humped. Is
3 that -- is that right?

4 A There are materials -- what do you mean by
5 materials?

6 Q I think you mentioned there were certain -- certain
7 commodities such as poisonous gas, radioactive
8 material that would fall within this category.
9 That's what I mean by materials.

10 A Okay, there are many things that fall into that
11 category as what I'm speaking of as high and wide
12 shipments -- auto parts, particular types of auto
13 parts, finished auto products.

14 Q Okay. So material that is either dangerous or
15 fragile or?

16 A It's high value.

17 Q Okay. And you mentioned that the reason for that
18 is that there's -- in flat switching and humping
19 that it's possible that accidents may occur such as
20 punctures or derailments?

21 A What I was speaking of with flat switching was the
22 materials that are in the CT-225 that you're
23 restricted from flat switching or cutting off in
24 motion and humping. The other materials as well as
25 some of those that are not restricted hazardous

1 materials in the CT-225 you may cut off and hump.

2 The difference being on the high value,
3 hazardous materials in the CT-225 would be the
4 coupling speed that they want this particular --
5 particularly the new way automobiles are shipped,
6 tied down-wise, we try to make our speed at 4 miles
7 an hour coupling, and even that is not acceptable
8 to automotive plants. They do not want them humped
9 at all. We have other commodities where people
10 just don't want them humped, so we do not hump
11 them.

12 Q And there are certain hazardous materials that fall
13 within that category. Is that right?

14 A In the CT-225, yes.

15 Q Okay. You mentioned that there were certain
16 conditions that are present in flat switching such
17 as icing on the tracks, things of that nature, that
18 cause that operation to be dangerous or whatever.

19 I am asking whether there are any conditions
20 that you're aware of associated with humping that
21 would cause, say, these auto manufacturers to ask
22 that their cars not be humped?

23 MR. ERMILIO: He already said that
24 automotive manufacturers asked that the cars
25 not be humped.

1 MR. LINDLAND: Right.

2 MR. ERMILIO: Regardless of the
3 conditions.

4 A That's regardless of the conditions. The same
5 thing with a high value shipment, regardless of the
6 conditions.

7 Q Okay. And is that because of the speed at which
8 the cars are rolling when they are coupled?

9 A Yes. If they would couple too hard or they may
10 shift or they're so fragile that no matter what
11 speed they coupled at, it would still cause them to
12 shift in the car. And to a certain extent, you
13 will always have some shiftability in motion when
14 it's brought to a stop, no matter how slow it's
15 brought to a stop.

16 Q I see.

17 But not all hazardous materials?

18 A Right.

19 Q Fall within that category?

20 A Require that type of handle, correct.

21 Q Okay. Okay.

22 You mentioned that a company by the name of
23 O. H. Chemicals was notified subsequent to the
24 hydrochloric acid spill in 19 -- or in 1991?

25 A Correct.

1 Q Do you know whether there are any records kept with
2 respect to notifying O. H. Chemicals?

3 A That was done through Philadelphia that they were
4 notified, and I believe I made some notes when I
5 talked to O. H. Chemical about what time they were
6 going to arrive, what time we could expect their
7 first arrival.

8 That, again, is with the U.O.R. packet if it
9 is.

10 Q Do you have a file out at the Elkhart Yard in your
11 office that's labeled O. H. Chemicals that will
12 contain any notifications to them?

13 A Not to my knowledge.

14 Q Do you know who the individual was in Philadelphia
15 that notified O. H. Chemicals?

16 A No.

17 Q Are you familiar with Tom Pendergast?

18 A Yes, I am. I recall that name, yes. I talked to
19 Mr. Pendergast before.

20 Q Did you talk to him with respect to this specific
21 spill?

22 A Yes, that was, I believe, a day or so afterwards I
23 talked to him.

24 Q Is that the only time you've talked to him?

25 A Dealing with this was the only time I talked to

1 him, with the spill.

2 Q So you never spoke with Tom regarding anything
3 other than this spill?

4 A That's correct.

5 MR. LINDLAND: Okay, I have no further
6 questions; however, we reserve the right to
7 re-examine this witness subject to the
8 production of any documents produced from
9 this deposition.

10 MR. ERMILIO: Any questions?

11 I have nothing.

12

13

14

Steven E. Dekker

15

16

SUBSCRIBED AND SWORN to before
me this _____ day of _____,
A.D., 1993.

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Notary Public, State of Indiana
County of Residence:
My Commission Expires:

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CERTIFICATE

I, Teresa L. Gemmel, Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place, Steven E. Dekker, who was first duly sworn by me to testify the truth and nothing but the truth in response to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that the deposition was read and signed by the deponent in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D., 1993.

Teresa L. Gemmel
Notary Public, State of Indiana
Residence: St. Joseph County
My Commission Expires 12-3-93